

CCC:JAM
F. #2018R

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

- against -

BRIAN BENES,

Defendant.

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EASTERN DISTRICT OF NEW YORK, SS:

AFFIDAVIT IN SUPPORT OF AN
APPLICATION FOR AN ARREST
WARRANT

(21 U.S.C. § 841(a)(1))

MJ 18-0189

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAR 01 2018 ★
LONG ISLAND OFFICE

JOSEPH MENDEZ, being duly sworn, deposes and states that he is a Drug Diversion Investigator with the Drug Enforcement Administration, duly appointed according to law and acting as such.

In and around and between January 2013 and January 2018, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant BRIAN BENES did knowingly and intentionally distribute and possess with intent to distribute a controlled substance, to wit: oxycodone, a Schedule II controlled substance.

(Title 21, United States Code, Section 841(a)(1))

The source of your deponent's information and the grounds for his belief are as follows:¹

¹ Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

1. I am a Drug Diversion Investigator with the Drug Enforcement Administration (“the DEA”). I have been a Drug Diversion Investigator with the DEA for approximately nineteen years. I am currently assigned to the DEA, New York Field Division, Long Island District Office. During my career I have been involved in the investigation of numerous cases involving the unlawful distribution of controlled substances, including but not limited to oxycodone, a Schedule II controlled substance. The facts set forth in this affidavit are based on my personal knowledge and observations, conversations with other law enforcement officers, reports of other law enforcement officers, my review of various documents and records related to this investigation and my training and experience.

2. The DEA is investigating the defendant and others for illegally obtaining and distributing oxycodone in the Long Island area (“the investigation”). The investigation concerns possible violations of, inter alia, 21 U.S.C. §§ 846 and 841, that is, conspiracy to distribute oxycodone and the distribution of oxycodone.

3. Oxycodone is a Schedule II controlled substance, meaning that it may only be dispensed if prescribed by an authorized practitioner. In New York State, written prescriptions by physicians may be printed on what is commonly referred to as a “prescription form.” A doctor licensed by the State of New York and registered by the DEA to write controlled substance prescriptions may order a ream of prescription forms from New York State. Each ream typically contains 100 prescriptions with a unique serial number and bar code, and New York State records will typically document the physician or medical practice to which each serial number is assigned. The recipient physician or medical practice will then typically print the name of the doctor, the doctor’s license number, and the address used by the doctor on his/her DEA registration and their registration number,

typically by means of a computer printer. The doctor issuing the prescription then must fill in, among other things, the patient's name, the drug prescribed, and the quantity of drug prescribed.

4. The investigation has revealed that, beginning in late 2013 and continuing into early 2018, the defendant, together with others, has unlawfully obtained numerous oxycodone prescriptions and tens of thousands of 30mg oxycodone tablets. Specifically, the investigation has revealed that the defendant will frequently use aliases and fraudulent identification documents to obtain prescriptions from doctors and pharmacies, as well as present prescriptions in the names of numerous different physicians to pharmacies throughout Long Island and the New York City area.

5. The DEA has been informed of the defendant's activities by the Supervising Pharmacist ("the Pharmacist") at a pharmacy located in Suffolk County, New York. The Pharmacist has reported to the DEA that the defendant has been presenting and filling prescriptions for 30mg tablets of oxycodone at the pharmacy since 2014, obtaining over 16,000 of pills from that pharmacy during that time. In doing so, the defendant has presented prescriptions purporting to be from at least eight different physicians. Additionally, the defendant has used various aliases at said pharmacy, including "Bryan Yates," "Brian Bennett," "Joseph Broyles," "Shawn Clarkson," and "Shawn Caraway."

6. Based on my training and experience and in the context of the investigation, the volume of oxycodone unlawfully obtained by the defendant during the period alleged is wholly inconsistent with personal use, and is instead being repackaged and sold in retail quantities.

7. The investigation has revealed that the defendant has used the alias “Brian Bennett” and a fraudulent Pennsylvania driver’s license to unlawfully obtain over 14,000 30mg oxycodone tablets. Specifically, on or about and between December 2013 through January 2018, both dates being approximate and inclusive, the defendant used the alias “Brian Bennett” with three different physicians, obtaining numerous prescriptions for oxycodone, and filling said prescriptions at pharmacies in Suffolk County. One of the physicians and a pharmacy employee positively identified the defendant as “Brian Bennett” in a photo array identification procedure.

8. The investigation has also revealed that the defendant has used the alias “Bryan Yates” and a fraudulent Pennsylvania driver’s license to unlawfully obtain over 14,000 30mg oxycodone tablets. Specifically, on or about and between November 2013 through January 2018, both dates being approximate and inclusive, the defendant used the alias “Bryan Yates” with three different physicians, obtaining numerous prescriptions for oxycodone, and filling said prescriptions at pharmacies in Suffolk County. Two pharmacy employees positively identified the defendant as “Bryan Yates” in photo array identification procedures. Additionally, law enforcement has obtained video surveillance from one of the aforementioned pharmacies on one occasion where “Bryan Yates,” fills a prescription, and the individual depicted is the defendant.

9. The investigation has revealed that the defendant has used the alias “Shawn Clarkson” to unlawfully obtain over 2,700 30mg oxycodone tablets. Specifically, on or about and between July 2015 through February 2017, both dates being approximate and inclusive, the defendant used the alias “Shawn Clarkson” with two different physicians, obtaining numerous prescriptions for oxycodone, and filling said prescriptions at pharmacies

in Suffolk County. In order to obtain a prescription from one of said physicians (“Physician 1”), the defendant presented Physician 1 with a fraudulent copy of DEA Form 106, “Report of Theft or Loss of Controlled Substances,” in the name of “Shawn Clarkson,” claiming that a previous amount of oxycodone medication had been stolen. Physician 1 and an employee in Physician 1’s office positively identified the defendant as “Shawn Clarkson” in photo array identification procedures.

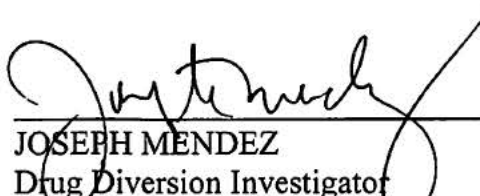
10. Physician 1 also informed law enforcement that a prescription pad may have been stolen from his office, as oxycodone prescriptions that Physician 1 did not authorize were being filled at a pharmacy in Nassau County in the name of “Brian Halloway.” A search of said pharmacy’s records show that over approximately the last five years, “Brian Halloway” has obtained over 5,000 30mg oxycodone tablets from said pharmacy. An employee of said pharmacy positively identified the defendant as “Brian Halloway” in a photo array identification procedure.

11. On or about October 31, 2017, the defendant was arrested by the Nassau County Police Department for New York State Penal Law offenses, including Possession of a Forged Instrument and Criminal Possession of a Controlled Substance. At the time of his arrest, the defendant was in possession of a fraudulent Pennsylvania driver’s license bearing the name “Brian Halloway.”

12. On or about February 6, 2018, the defendant was arrested by the Suffolk County Police Department for New York State Penal Law offenses, including Possession of a Forged Instrument. At the time of his arrested, the defendant was in possession of a fraudulent Pennsylvania driver’s license in the name of “Shawn Johnston.”

WHEREFORE, your deponent respectfully requests that the defendant BRIAN BENES be dealt with according to law.

IT IS FURTHER REQUESTED that this application be sealed until such time as the warrant and arrest is executed, upon which this document shall be automatically unsealed by operation of law.



JOSEPH MENDEZ
Drug Diversion Investigator
Drug Enforcement Administration

Sworn to before me this
1 day of March, 2018



THE HONORABLE GARY R. BROWN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK